

Message Text

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ACTION IO-06

INFO OCT-01 ARA-06 EUR-08 ISO-00 SSO-00 NSCE-00 USIE-00

L-01 FRB-01 OMB-01 TAR-01 SP-02 SWF-01 AGR-05 AID-05

CIAE-00 COME-00 EB-04 INR-05 LAB-01 NSAE-00 OIC-01

RSC-01 SIL-01 STR-01 TRSE-00 CIEP-01 CEA-01 AF-04

EA-06 NEA-06 SS-15 NSC-05 DRC-01 INRE-00 /091 W

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FM USMISSION USUN NEW YORK

TO SECSTATE WASHDC IMMEDIATE 6470

INFO USMISSION GENEVA

USMISSION EC BRUSSELS

USMISSION OECD PARIS

AMEMBASSY MEXICO CITY

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TREASURY PASS BRADFIELD

E.O. 11652: N/A

TAGS: UNCTAD, EGEN, ETRD

SUBJECT: CHARTER OF ECONOMIC RIGHTS AND DUTIES

1. ON 10/16 THE INVESTMENT GROUP CONTINUED SPLIT MEETINGS BETWEEN GROUP B, ON THE ONE HAND, AND THE G-77 (WITH CHINA AND RUMANIA), ON THE OTHER, WITH CHAIRMAN MULIRO CONTINUING HIS "SHUTTLE DIPLOMACY". MULIRO PRODUCED NEW TEXTS ON 2(A), (B) AND (D), VIZ:

"(2) EACH STATE HAS THE RIGHT:

(A) TO REGULATE FOREIGN INVESTMENT WITHIN ITS NATIONAL JURISDICTION IN CONFORMITY WITH ITS DEVELOPMENT OBJECTIVES AND PRIORITIES, AND TO ENSURE THAT FOREIGN INVESTMENT IS IN ACCORDANCE WITH ITS NATIONAL INTERESTS.

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TORS COMPLY FULLY WITH ITS LAWS AND REGULATIONS;

(B) TO ENTER FREELY INTO INVESTMENT AGREEMENTS RELATING TO THE IMPORT OF FOREIGN CAPITAL, IN ACCORDANCE WITH THE PRINCIPLES OF SAFEGUARDING NATIONAL SOVEREIGNTY AND DEVELOPING THE NATIONAL ECONOMY OF THE HOST STATE, WHICH AGREEMENTS SHALL BE OBSERVED IN GOOD FAITH;

ALTERNATIVE 1

(D) TO NATIONALIZE, EXPROPRIATE OR REQUISITION FOREIGN PROPERTY PROVIDED THAT COMPENSATION, AS CALLED FOR AND AS APPROPRIATE IN THE LIGHT OF THE RELEVANT CIRCUMSTANCES, SHALL BE PAID.

ALTERNATIVE 2

(D) TO NATIONALIZE, EXPROPRIATE OR REQUISITION FOREIGN PROPERTY; IN THE EXERCISE OF THIS RIGHT, THE STATE CONCERNED SHALL DETERMINE THE MATTER OF COMPENSATION, INCLUDING THE AMOUNT THEREOF, IN THE LIGHT OF ALL RELEVANT CIRCUMSTANCES."

2. GROUP B FOUND 2(A) ACCEPTABLE AND REFERENDUM, AND MULIRO WAS INFORMED ACCORDINGLY. ON 2(B) U.S. DEL EXPRESSED CONCERN THAT THE "IN ACCORDANCE" PHRASE COULD BE THOUGHT TO MODIFY "INVESTMENT AGREEMENTS", AND PROPOSED THAT THE PHRASE APPEAR BEFORE "TO ENTER FREELY" OTHER DELS SAW SAME DIFFICULTY. U.S. DEL ALSO EXPRESSED CONCERN WITH THE "SAFEGUARDING" LANGUAGE, SUGGESTING TO REPLACE IT WITH "IMPLEMENTING". AMB PUTMAN (BELGIUM) FOR GROUP B PROPOSED THE "IN ACCORDANCE" AMENDMENT TO MULIRO, AND ALSO NOTED THAT SOME DELS WISHED TO HAVE "IMPLEMENTING" OR EQUIVALENT LANGUAGE IN PLACE OF "SAFEGUARDING". MULIRO REPLIED THAT THE CHINESE BACKED BY THE G-77 WERE INSISTENT ON RETAINING THE "IN ACCORDANCE" LANGUAGE WHERE IT WAS, PRECISELY BECAUSE OF ITS AMBIGUITY. THE ISSUE REMAINS A STAND-OFF. MOST IF NOT ALL GROUP B DESL EXCEPT U.S. INCLINED TO ACCEPT 2(B) AS IT IS.

3. GROUP B FIRMLY REJECTED THE CHAIRMAN'S RPT CHAIRMAN'S PROPOSALS FOR 2(D). PUTMAN WILL SO INFORM MULIRO, LIMITED OFFICIAL USE

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EXPRESSING DISMAY AT THE WIDE GAP BETWEEN THE CHAIRMAN'S ALTERNATIVE TEXTS AND THE BRILLANTES TEXT. SCALI

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